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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,913	06/20/2001	Hiroshi Oki	1614.1173	5633
21171 7590 02/10/2009 STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005				
EXAMINER				
JANVIER, JEAN D				
ART UNIT		PAPER NUMBER		
3688				
MAIL DATE		DELIVERY MODE		
02/10/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/883,913

Applicant(s)

OKI, HIROSHI

Examiner

JEAN JANVIER

Art Unit

3688

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 4-5, 10-13 and 17 is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-9 and 14-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Response to Applicant's Arguments

The Examiner herein drops the Heinz's reference, which is no longer available as prior art since the foreign priority has been perfected with the recorded English translation of the Japanese priority Document.

Applicant's arguments are based on the amended claims and are fully addressed in the Office Action below.

Further, it appears that claims 4-5, 10-13 and 17 are allowable over the prior art of record, which does not teach **calculating a payback value that is to be made to both a customer and a middleman based on the recorded use of a product, distributed by the middleman, by the said customer.**

Moreover, contrary to the Applicant's contention, it is herein understood that the "use result" can contain a plurality of variables such as period of use, functions used, access time, start time, end/exit time to name a few. However, those specific variables do not directly impact the functionality or utility of the method or system by which a payback is computed or calculated on behalf of a distributor since, broadly considered, the claims simply recite calculating a payback based on the use of the product, but not on the specific variables related to the use itself. In other words, if the product is used even once by the user for at least one minute, then a payback will be made to the distributor since the calculating step does not directly depend on the specific variables. To this end, "storing use result, including a period of use and functions" can be interpreted as -- storing use result, wherein the use result includes a period of use and functions used --. At best, this may be considered as an "Intended Use" recitation. It appears here that the Applicant is improperly reading limitations from the specification into the claimed

invention. Although the Examiner reads the claims in light of the specification, however, specific limitations from the specification are not directly read into the claims.

Finally, the Applicant is encouraged to contact the Examiner, if need be, to discuss the rejection upon receiving the Action.

Therefore, the Applicant's request for allowance or withdrawal of the last Office Action has been fully considered and respectfully denied in view of the foregoing response since the Applicant's arguments as herein presented are not convincing and thus, the current **Office Action has been made Final.**

DETAILED ACTION

Status of the Claims

Claims 1-17 are currently pending in the Application.

Allowable claims

It appears that claims 4-5, 10-13 and 17 are allowable over the prior art of record, which does not teach calculating a payback value that is to be made to both a customer and a middleman based on the recorded use of a product, distributed by the middleman, by the said customer.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 3 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here the claims fail to meet the above requirements because the steps are neither tied to another statutory class of invention (such as a particular apparatus) nor do they physically transform the underlying subject matter (such as an article or materials) to a different state or thing. In claim 3, the steps of recording and calculating are performed without using a particular machine. To be statutory, under 35 USC 101, each step in the claim should be performed using a particular machine (computer, apparatus, etc.). (In re *Bilski*, 88 USPQ2d 1385. (Decided October 30, 2008)). Claims 2 and 35 suffer from similar deficiencies and are rejected under a similar rationale.

Further, the Examiner notes that Applicant may show that a process claim satisfies §101 either by showing that Applicant's claim is tied to a particular machine, or by showing that Applicant's claim transforms an article (See *Benson*, 409 U.S. at 70). Certain considerations are applicable to analysis under either branch. First, as illustrated by *Benson*, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility (See *Benson*, 409 U.S. at 71-72). Second, the involvement of the machine or

transformation in the claimed process must not merely be insignificant extra-solution activity (See Flook, 437 U.S. at 590).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6-9 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer, US Patent 6, 148, 332A.

As claims 1-3, 6-9 and 14-16, Brewer discloses distributing a **client software component (information product) that enables a user of a personal computer (PC)** to connect and interact, over a communication network, with a server of an Internet Service Provider (ISP) to browse the network while required messages, such as advertisements, are being displayed in a particular manner on a display screen of the user's PC (information processing unit) for interaction with the user and user's activity or interaction is recorded (the server storage means stores in general the user's service usage of the Internet service and the user's interaction with the displayed advertisements). As long as a valid communication connection between the PC and the ISP exists, over a network, when the user logs in subsequent to receiving and installing the ISP client software (information product) on his PC, the PC is forced to display a particular

message (news, advertisement) in a particular fashion. A user will not be allowed to minimize the message, close the message, or hide the message behind other windows on the PC display screen. The messages will also be interactive so that users are able to get more information related to a particular displayed message, such as by automatically browsing to an associated location on the World Wide Web of the Internet (the user clicks on a hyperlink shown in a displayed message to visit the source of the message and request more information). Information related to interaction with the user is also tracked and communicated back to the ISP for storage and reporting (tracking and recording the user's activity and/or service use and storing the user's activity permanently in the server storage means). The user is also able to designate message selection criteria, such as expressing an interest in seeing certain types of advertisements. The system, as disclosed above, is configured to display messages on an identified or registered Internet client (PC) screen whenever an active connection exists between an Internet Server of the ISP and the said Internet client (See abstract).

In general, the present system, in a preferred embodiment, includes a mandatory message display and reporting modules that includes a new client software component for a personal computer (PC) interacting with a new server of an Internet Service Provider (ISP) to require certain messages, or information, to be displayed in a particular manner on a display screen of the PC or Internet client for interaction with a user and reporting user activity (col. 1: 45 to col. 2: 34).

The new software component (of the access software or information product) will also gather information related to interaction with the user. This information is communicated back to the mandatory message server 100 of the ISP and stored thereon. Besides tracking which

messages are actually displayed, user interaction tracking is also provided (service usage of the Internet service and/or the user's interaction or activity is recorded). In other words, as the user accesses additional information, i.e. browsing or hyper-linking to a particular source web site based by clicking on the mandatory message area or window or banner having the message displayed thereon, this act is recorded and communicated for storage at the mandatory message server 100 of the ISP. In addition to storing this type of user-specific message display and interaction history information (service usage), which is useful for billing the advertisers, the mandatory message server 100 maintains a database of messages categorized at least by user selection criteria (and including the data of the messages, associated URL's, etc.) and a database of user-specific message selection preferences. The temporary messages and the limited user display options are stored at the PC 10. It is further understood that the new software, which enables the user to connect to the ISP, is distributed to the user either electronically or online or on diskettes or CDs (having unique identifiers) via the Post Office (including other means) or through third parties or associated retailers POSes or checkouts (distributors) (col. 5: 5-22).

Here, Brewer discloses distributing a client software component (information product or network access software or Internet client software) that enables a user of a personal computer (PC) to connect and interact, over a communication network, with a server of an Internet Service Provider (ISP) to browse the network while required messages, such as advertisements, are being displayed in a particular manner on a display screen of the user's PC (information processing unit) for interaction with the user and user's activity or interaction is recorded. It is herein understood, from the Brewer's Patent, that the new software or Internet client software (Earthlink client software), which enables the user to connect to the ISP or network service

provider to request network service or browse the network, is distributed to the user either electronically or online or on removable media such as diskettes or CDs (having unique identifiers imprinted thereon) via the Post Office (including other means) or through third parties or associated retailers (distributors) POSes or checkouts (col. 5: 5-22). The user installs the distributed software (product) on his PC (information processing device) upon receiving the said software. The user's PC dials into a network server, to complete the installation of the software, subsequent to providing necessary demographic information, billing (credit) information (for paid network service), an identifier and/or temporary password and username imprinted or supplied with the removable medium (diskette or CD) that contains the software. The server receives and validates the required data, especially the information that comes with the software and credit card data. The server subsequently provides a permanent username and password to the user, which enable the user, now registered, to access network service or browse the network at any given time via the ISP, which usually charges a fee to the user for such access (distributing a software to the user and recording the user's use of the product).

As per claims 6, 9 and 14, although it is implicitly or silently supported in the Brewer's system that the client-software or product is encoded and distributed on a recorded medium (with a unique identifier) to the user either electronically or online or on diskettes (CDs) via the Post Office or through third parties or associated retailers POSes or checkouts (distributors), however, Brewer does not expressly disclose storing a distributor's name distributing an identified product **and calculating or paying by the Internet (Network) Service Provider (ISP) a fee to the distributor or participating retailer or third party for distributing the identified client-**

software or access program or product (information-processing product) to the user(s) based on the user's information (recorded use information) identifying the user and the unique product.

“Official Notice”

However, the process for providing a Software or a product or access program encoded on a computer readable medium (diskette or CD bearing a unique Product identifier) to a user or customer via a third party or distributor, which, when installed on the user's computer, allows the user to access an online distribution system or a computer network or Internet Service Provider (ISP) and for compensating the distributor for distributing the software to the user at a POS is well-established and well documented in the art. In fact, Internet Service Providers or ISPs, such as AOL.com (America Online) including Earthlink, have been distributing free software encoded on 1.44 floppy diskettes (CDs) to prospect users or the public at large via the Post Office or participating retailers' (distributors) POSes or checkouts. The medium or diskette containing the software or client provided by AOL.com or Earthlink, for example, bears a temporary login name and password or identification (including other product identifier). Upon installing the software, encoded on the diskette, on his computer, a user will be prompted to enter the temporary login name and password or identification, which allow the user to connect via a telephone line to a remote server associated with the ISP or AOL.com, wherein, upon validating the user's temporary information imprinted on the diskette, the user can complete the installation or registration process by providing his demographic data including a credit card number (recorded use result) for future billing and establishing a permanent login name or screen name and a password or identification that are stored in the ISP server database. Subsequent to the installation or registration process, the user, now registered, can browse the ISP site or visit other

sites or web sites available on the Internet. Further, it is understood that AOL.com (Earthlink) should compensate the distributors or third parties for distributing the diskettes or CDs, having the software encoded thereon, at their POSes or checkouts or locations in accordance with a predefined business agreement and wherein upon correlating the information received from the user's installation, such the temporary login name and password and other imprinted product id, with information in a registry or database file, **AOL.com server is configured to identify the unique diskettes or products distributed by a specific distributor and calculate a compensation due to the distributor for distributing the diskettes or CDs, having the access program or Internet software encoded thereon, based on the business agreement (calculating or paying by the Internet (Network) Service Provider (ISP) a fee to the distributor or participating retailer or third party for distributing the identified client-software or access program).**

Additionally, the manner in which the payback, made to the distributor, is computed constitutes a non-functional descriptive material since the distributor will receive a payment or payments regardless of what method is used to calculate the payment or payments.

Moreover, it is herein understood that the "use result" can contain a plurality of variables such as period of use, functions used, access time, start time, end/exit time to name a few. However, those specific variables do not directly impact the functionality or utility of the method or system by which a payback is computed or calculated on behalf of a distributor since, broadly considered, the claims simply recite calculating a payback based on the use of the product, but not on the specific variables related to the use itself. In other words, if the product is used even once by the user for at least one minute, then a payback

will be made to the distributor since the calculating step does not directly depend on the specific variables. To this end, “storing use result, including a period of use and functions” can be interpreted as -- storing use result, wherein the use result includes a period of use and functions used --. At best, this may be considered as an “Intended Use” recitation.

Finally, Applicant discloses, as prior art, in the background of the specification on page 2: 20-35, paybacks (compensations) are often provided to client distributors, who distribute clients (such as access program or software) for free or at low prices to users, as an incentive to distribute the client or product (As per Applicant’s own disclosure).

Therefore, an ordinary skilled artisan, implementing the Brewer’s system or facing the problem of expanding/increasing network usage, would have been motivated at the time of the invention to combine the above public disclosure (“Office Action”) with the Brewer’s system so as to distribute to prospective users free diskettes or CDs, having encoded thereon the ISP client-software or access program for enabling the prospective users to connect to the Internet through the ISP server or system, via a distributor’s or retailer’s POS where the recordable media (diskettes or CDs) can be picked up by the prospective users during the course of shopping and wherein each diskette or CD having imprinted thereon (on appended label) a user’s temporary password and login name and other indicia (this information is contained in the CD or diskette package) that are used by the users during installation to complete a sign-up or registration process and to provide a payback or commission to the distributor upon receiving a signal that at least one identified distributed medium (diskette or CD) having a product (access software) encoded thereon is used by a user to sign-up with the network or ISP (calculating a payback

value on behalf of the distributor based on the use of the distributed product to sign-up with the network), thereby providing a financial incentive to the distributor to display the diskettes or CDs, having encoded thereon the ISP sign-up software near the checkout stations within his location where they can be easily picked up for free by interested customers or prospects while paying for transactions at the distributor's or retailer's POS in an effort to encourage the customers or prospective users to join the particular ISP network service, instead of a competitor's, for a fee, and wherein identification data associated with a particular diskette or CD are read during the users' registration and are used not only to pay the distributor for a successful distribution, but also to measure the effectiveness of the distribution of the diskettes or CDs through third parties or independent distributors and the ISP is able to increase its subscriber base and economic bottom line, while compensations or money received by the distributor for giving away the recordable media, having the ISP client-software encoded thereon, to his customers are used to help cover the distributor's overhead expenses.

Claims 1-3, 6-9 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shear, US Patent 4,827,508.

As per claims 1-3, 6-9 and 14-16, shear discloses a "return on investment" digital database usage metering, billing, and security system including a hardware device, which is plugged into a computer system bus (or into a serial or other functionally adequate connector) and a software program system resident in the hardware device. One or more databases are encrypted and stored on a non-volatile mass storage device/storage means (e.g., an optical disk) or CD. A tamper-proof decrypting device and associated controller decrypts selected portions of

the stored database (product or processing product) and measures the quantity of information, which is decrypted for use (use results). This measured quantity information is communicated to a remote centralized billing facility and used to charge the user a fee based on database usage (charging a fee to a user for using a portion of the application(s) or databases/products stored on the diskette or CD based on use result). A system may include a "self-destruct" feature, which disables system operation upon occurrence of a predetermined event unless the user implements an "antidote"--instructions for implementing the antidote being given to him by the database owner only if the user pays his bill. Absolute database security and billing based on database usage are thus provided in a system environment wherein all database access tasks are performed at the user's site. Moreover, a free market competitive environment is supported because literary property royalties can be calculated based on actual data use (see abstract).

The present system provides a facility for measuring usage of the on-site database for the purpose of billing the user according to the database use or a portion of the application(s) stored on the diskettes or CDs (based on use results) and for periodically conveying the measured usage (recorded use results) information to the database owner or his agent while preventing the user from tampering with the measured usage information (See Col. 3: 52 to col. 8: 34).

Indeed, a Decoder/biller 300 of fig. 3 meters database usage (product usage) and generates usage information (recorded use result) in a form, which can periodically be conveyed to the owner of the databases (or his agent, e.g., a service company) (see FIG. 6, blocks 906-908). The usage information is typically used to calculate a database access fee the user is to be charged for using one or more applications stored in a storage means (see FIG. 6, blocks 910-914). See col. 9: 18-23.

The Decoder/biller block 300 measures the amount and/or type of information sent to it for decryption and stores information indicating database usage over time from such measured amounts. Decoder/biller block 300 stores all necessary billing and usage information in a protected, non-volatile memory device (or in a protected, non-volatile storage facility within the host computer 200) for later retrieval and use in calculating database usage fees (col. 12: 21-29).

Moreover, the user can be billed an annual fee for unlimited use of some databases or database properties, and billed only for actual use of other databases or database properties. In this way, the user can pay a flat fee for the databases, or specific database properties or "books", he uses most often, and yet have access on a "pay-as-you-go" basis to other databases which he might use occasionally but not enough to justify paying the cost for unlimited use. This billing method provides the user with database resources he might not otherwise be able to afford, and also stimulates use of databases, which are not used often but are nevertheless extremely valuable at times (Col. 16: 29-41).

Here, the process of storing or identifying the host or distributor distributing the different databases (digital products) on behalf of the publishers is implicitly supported in the prior art or reference.

As per claims 6, 9 and 14, Shear does not expressly disclose storing (identifying) a distributor's name distributing an identified product (digital property) from a publisher to an identified user **and calculating or paying by the publisher or Provider (network provider) a fee to the distributor or system host owner (company service) or third party for**

distributing the identified client-software or application or product (information-processing product) to the user(s) based on the user's recorded use of the product.

("Official Notice").

However, it is common practice for a host system owner or third party to charge a fee, based on a predetermined agreement or contract, to a manufacturer or a publisher or service provider, such as AOL.com, Netzero.com, Earthlink, etc, for performing a service or distributing a product, such as an access software (client software), an application or a program, online at the host system site or offline at the third party's location on behalf of the publisher or provider.

Additionally, the manner in which the payback, made to the distributor, is computed constitutes a non-functional descriptive material since the distributor will receive a payment or payments regardless of what method is used to calculate the payment or payments.

Moreover, it is herein understood that the "use result" can contain a plurality of variables such as period of use, functions used, access time, start time, end/exit time to name a few. However, those specific variables do not directly impact the functionality or utility of the method or system by which a payback is computed or calculated on behalf of a distributor since, broadly considered, the claims simply recite calculating a payback based on the use of the product, but not on the specific variables related to the use itself. In other words, if the product is used even once by the user for at least one minute, then a payback will be made to the distributor since the calculating step does not directly depend on the specific variables. To this end, "storing use result, including a period of use and functions" can be interpreted as -- storing use result, wherein the use result includes a period of use and functions used --. At best, this may be considered as an "Intended Use" recitation.

Finally, Applicant discloses, as prior art, in the background of the specification on page 2: 20-35, paybacks (compensations) are often provided to client distributors, who distribute clients (such as access program or software) for free or at low prices to users, as an incentive to distribute the client or product (As per Applicant's own disclosure).

Therefore, an ordinary skilled artisan, implementing the Shear's system, would have been motivated at the time of the invention to incorporate the above public disclosure ("Official Notice") into the Shear's system so as to enable prospective users to access or receive the different databases (applications) from the publishers via a host system or distributor and to calculate a payment due to the host system (distributor) based on the amount of money charged to the users in accordance with their use of the products or applications (databases) as recorded therein, thereby providing a financial incentive to the distributor or host system to distribute the publishers' products at his location or site to prospective users, while the money received by the distributor for distributing the publishers' products to the prospect users are used to help cover the distributor's or host owner's overhead expenses.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

USP 5,537,314 to Kanter discloses a credit accumulation and accessing system for a plurality of sponsoring companies and participants having at each sponsoring company location (14, 16), a common bus (26), which communicates with participant data input (28), performance data input (34), computer processing (24), memory (30), an award output device (36), and an input/output device (32). Input/output device (32) may connect to a central control center (12),

and/or a plurality of second sponsoring companies (14, 16), and/or a plurality of financial institutions (94), through communication lines (38). Sponsoring company, participant, and performance data, along with award conversion tables, pyramidal association tables, award applicable merchandise UPC codes, financial-institution-issued lines of credit and computer operational programming, are stored. Under control of the operational program several tasks are accomplished accordingly, including, creating subdirectories for a single participant account so as to selectively associate the single account subdirectories with multiple sponsoring company accounts and deciphering such accordingly at points of sale, calculating, posting, and/or issuing discounts, raffle entries, store-credit returns, points, cash values, bill values, in accordance with performance of participants (72, 74), while sending results immediately and/or periodically to appropriate destinations, which may include computer memory and/or bank accounts and/or plastic cards on behalf of participants, participant sponsors in a pyramidal-type structure, sponsoring companies, sponsoring companies' sponsors in a pyramidal-type structure, raffle sponsors, and redeemed at appropriate locations which may include, sponsoring company, participant, beneficiary, or financial institution bank accounts (52, 54, 82, 84, 94), sponsoring company locations (14, 16), designated sponsoring company award output devices (36), participants' households, beneficiaries' locations, and cash dispensing machines, and received in the appropriate forms, which may include, designated sponsoring company merchandise, wire transfer, check, cash, coupon, certificate, charge card balance reductions, travel tour, or catalog merchandise (See abstract).

USP 6,134,533 to Shell discloses a server system for multi-level vending of any electronically transferable product through a communications network directly to a customer's

computer. This server system (herein called a Sales Support Server) integrates the collection of a payment via the network and the automatic distribution of the product with the calculation of commissions using a **multi-level marketing** commission structure and the distribution of commissions and fees via the network. The preferred configuration includes a client application (herein called a Sales App) which runs as a plug-in to a network browser on the customer's computer and which provides a purchase request and registration data to a Sales Support Server and performs the installation of the product on the customer's computer. The Sales Support Server acquires the payment, transfers the product, calculates and pays the commissions, and adds the purchaser's registration information to the multi-level sales database for the product. The usefulness of this invention includes physical product distribution through a shipping and handling system (See abstract).

WO 96/36926 to McDonald discloses several multilevel marketing systems for advertising, market-research, shopping and similar services are described. Participants interact with a computer system to receive advertising, respond to market surveys, or place purchase orders as the case may be. The participants form a network which is administered by a network organizer through the computer system. Each participant is rewarded according to the activity of others who are sponsored as downline participants in the network. The participants are encouraged to continue their own activity rather than simply recruit and sponsor new participants (See abstract).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication from the Examiner should be directed to Jean D. Janvier, whose telephone number is (571) 272-6719. The aforementioned can normally be reached Monday-Thursday from 10:00AM to 6:00 PM EST. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. James Myhre, can be reached at (571) 272- 6722

Non-Official- 571-273-6719.

Official Draft : 571-273-8300

02/06/09

/J. J./

/Jean Janvier/

Primary Examiner, Art Unit 3688

